



UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/265,788	03/10/99	LU R	08291/482001

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EXAMINER
GARRETT, D

ART UNIT	PAPER NUMBER
1774	9

DATE MAILED: 07/24/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Advisory Action

Application No.

09/265,788

Applicant(s)

Lu et al.

Examiner

Dawn Garrett

Group Art Unit

1774

**THE PERIOD FOR RESPONSE:** [check only a) or b)]

- a) ☐ expires _____ months from the mailing date of the final rejection.
- b) ☒ expires either three months from the mailing date of the final rejection, or on the mailing date of this Advisory Action, whichever is later. In no event, however, will the statutory period for the response expire later than six months from the date of the final rejection.

Any extension of time must be obtained by filing a petition under 37 CFR 1.136(a), the proposed response and the appropriate fee. The date on which the response, the petition, and the fee have been filed is the date of the response and also the date for the purposes of determining the period of extension and the corresponding amount of the fee. Any extension fee pursuant to 37 CFR 1.17 will be calculated from the date of the originally set shortened statutory period for response or as set forth in b) above.

- ☐ Appellant's Brief is due two months from the date of the Notice of Appeal filed on _____ (or within any period for response set forth above, whichever is later). See 37 CFR 1.191(d) and 37 CFR 1.192(a).

Applicant's response to the final rejection, filed on 7-7-00 has been considered with the following effect, but is NOT deemed to place the application in condition for allowance:

☒ The proposed amendment(s):

- ☒ will be entered upon filing of a Notice of Appeal and an Appeal Brief.

☐ will not be entered because:

- ☐ they raise new issues that would require further consideration and/or search. (See note below).
- ☐ they raise the issue of new matter. (See note below).
- ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal.
- ☐ they present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE:

- ☒ Applicant's response has overcome the following rejection(s):

The rejections under 35 USC 112, second paragraph, have been overcome in applicant's proposed amendment.

- ☐ Newly proposed or amended claims _____ would be allowable if submitted in a separate, timely filed amendment cancelling the non-allowable claims.

- ☒ The affidavit, exhibit or request for reconsideration has been considered but does NOT place the application in condition for allowance because:
Please see attached letter.

- ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

- ☒ For purposes of Appeal, the status of the claims is as follows (see attached written explanation, if any):

Claims allowed: none

Claims objected to: none

Claims rejected: 1-14

- ☐ The proposed drawing correction filed on _____ ☐ has ☐ has not been approved by the Examiner.

- ☐ Note the attached Information Disclosure Statement(s), PTO-1449, Paper No(s). _____.

- ☐ Other

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LETTER

Response to Arguments and Declaration

1. Applicant argues the prior art necessarily requires carboxylates and glycosides have not been described as “essential” to the prior art compositions. The examiner submits the instant independent claim uses open language which does not exclude the presence of carboxylates in the compositions. With regard to the selection of glycosides as nonionic surfactants in the compositions, the prior art discloses glycosides as suitable surfactant and although glycosides are not used in an example in the prior art, non-preferred embodiments can be indicative of obviousness (see *In re Lamberti*, 192 USPQ 278 (CCPA 1976); *In re Boe*, 148 USPQ 507 (CCPA 1976); *In re Kohler*, 177 USPQ 399 (CCPA 1973)).

Applicant also urges the declaration of Robert Zhong Lu under 37 CFR 1.132 “illustrates that the important and significant results obtained require a foreknowledge of the properties of alkylpolyglycosides and their beneficial effects in order to produce the present inventive compositions.” Applicant is suggesting in the data submitted describing Draize Eye tests with the inventive compositions vs. comparison compositions shows the importance of using alkylpolyglycosides in the inventive compositions. The examiner submits that the data is insufficient to establish unexpected results because components other than the alkylglycoside, GlucoPON, were varied. In other words, there is a lack of clear side-by-side comparisons between the inventive compositions and the comparison compositions to establish unexpected results.

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For example (see declaration), Ex. 1 comprises 0.25% EDTA, 4.00% Polytergent, 4.00% Glucocon, 1.625% BTC 8358, 0.20% fragrance, 0.20% Dye, and the remainder water. In order to establish unexpected results based on this instant composition, there should be a comparison example with all components of Ex. 1 with the exclusion of the alkylpolyglycoside, Glucocon. Remaining instant examples A-C also lack comparison examples comprising all components of A-C with the exclusion of the alkylpolyglycoside, Glucocon. The examiner respectfully maintains the rejections of record.

2. Should you have any questions concerning this communication, please direct them to Dawn Garrett at 703-305-0788. The examiner can be reached at this number from 8:00 am to 5:00 pm E.S.T. Monday-Friday. If attempts to reach the examiner by telephone prove unsuccessful, the examiner's supervisor, William Krynski, can be reached at 703-308-2376.

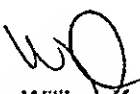
A facsimile center has been established for Group 1700 on the 8th floor of Crystal Plaza

3. The hours of operation are Monday through Friday, 8:45 am to 4:45 pm. The fax numbers for Art Unit 1700 are 703-305-3599 for official after-final faxes, and 703-305-5408 for all other official faxes. Use of the Group 1700 center will facilitate rapid delivery of materials to examiners in Art Unit 1774.

Any inquiry of a general nature, or those relating to the status of this application should be directed to the group receptionist whose telephone number is 703-308-2351.


D.G.

July 6, 2000


William Krynski
Supervisory Patent Examiner
Technology Center 1700